

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
WILL J. SHERARD and)
W. J. SHERARD REALTY COMPANY,)
)
Defendants.)
)

'05 MAY -2 A10 :25

Case No.:

05-C-0486

CONSENT DECREE

WHEREAS, Plaintiff United States of America ("United States"), on behalf of the United States Department of Housing and Urban Development ("HUD") and the United States Environmental Protection Agency ("EPA") (collectively, "Plaintiff") have filed a complaint alleging that Will J. Sherard and W. J. Sherard Realty Company (collectively "Defendant") violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Section 1018"), 42 U.S.C. § 4852d; and

WHEREAS, Section 1018 and the implementing regulations, found at 24 C.F.R. Part 35, Subpart A, and 40 C.F.R. Part 745, Subpart F, require, among other things, that the owners and managing agents of residential properties subject to the law make certain disclosures and provide certain records concerning Lead-Based Paint and Lead-Based Paint Hazards to tenants when a new lease is entered into or, if the lease predates the effective date of Section 1018, at the first change to the terms of an existing lease, such as a rent increase; and

3/21/05

WHEREAS, Defendant owns and manages thirty-nine (39) residential properties in Wisconsin constructed prior to 1978 containing approximately 65 units; and

WHEREAS, the United States alleges that Defendant failed to make certain disclosures required by Section 1018 in residential properties in Wisconsin; and

WHEREAS, the United States alleges it is entitled to seek injunctive relief in a judicial action, including, but not limited to, an order requiring Defendant to comply with Section 1018 prospectively, and an order requiring Defendant to abate Lead-Based Paint; and

WHEREAS, the United States alleges that Defendant is subject to administrative civil penalties by HUD and EPA for violations of Section 1018 of up to \$11,000 per violation; and

WHEREAS, the United States and Defendant agree that settlement of the claims of the United States without further litigation is in the public interest and that entry of this Consent Decree is an appropriate means of resolving this matter; and

WHEREAS, the Parties agree that settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability or wrongdoing by Defendant, but is intended solely to settle all claims asserted by the United States against Defendant on the terms set forth herein.

NOW, THEREFORE, upon consent and agreement of the United States and Defendant, and the Court having considered the matter and been duly advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 4852d(b)(2) and has personal jurisdiction over Defendant. Defendant consents to, and shall not challenge entry of, this Consent Decree and the Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 4852d(b)(2) and 28 U.S.C. § 1391(b) & (c), because the lawsuit involves actions that took place, and all thirty-nine (39) Subject Properties are located, in the Eastern District of Wisconsin.

II. PARTIES BOUND

3. This Consent Decree shall apply to and be binding on the United States and Defendant, and its heirs, successors and assigns.

4. Defendant shall remain liable to the United States for all the obligations set forth in this Consent Decree. If Defendant intends to sell or transfer any property subject to this Consent Decree prior to termination of the Consent Decree, all of the following must occur before the sale or transfer: (a) all work must be performed at the Subject Property as set forth in Section VI; (b) a Clearance Examination must be passed as set forth in Section VI and the clearance examination report ("Clearance Report") sent to HUD requesting an expedited approval due to the pending sale or transfer; and (c) HUD must approve the final Clearance Report.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree, which are defined in the Residential Lead-Based Paint Hazard Reduction Act, shall have the meaning given in the Act or in any regulations promulgated pursuant to the Act. Whenever other terms listed below are used in this Consent Decree, the following definitions shall apply:

a. “Clearance Examination” shall mean an activity conducted after window replacement and/or hazard abatement activities have been performed to determine that the abatement activities are complete and that no settled dust-lead hazards exist. The clearance process shall include a full lead-based paint inspection, visual assessment, and collection and analysis of environmental samples. The appropriate clearance standards shall be the more restrictive of those set by the jurisdiction where the property is located or by Section 403 of the Toxic Substances Control Act (“TSCA”) and its implementing regulations, 40 C.F.R. Part 745, Subpart D.

b. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

c. “HUD Guidelines” shall mean the edition of the “HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” in effect on the date the work is conducted pursuant to this Consent Decree.

d. “Interest” shall mean interest pursuant to 28 U.S.C. § 1961.

e. “Lead-Based Paint” shall mean paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

f. “Lead-Based Paint Free” shall mean housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

g. “Lead-Based Paint Hazards” shall mean lead-based paint hazards as that term is defined in 40 C.F.R. § 745.65.

h. “Lead Abatement Supervisor” shall mean any person licensed by the State in which the property is located to perform lead abatement and mitigation, and supervise lead abatement workers who perform lead abatement and mitigation.

i. “Lodging Date” shall mean the date of the initial filing of this Consent Decree with the Court for the Eastern District of Wisconsin. The Lodging Date is prior to the commencement of the public comment period under Section XIX of this Consent Decree and to formal entry by the Court of the Consent Decree.

j. “Month” shall mean a calendar month.

k. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or a lower case letter.

l. “Section” shall mean a portion of this Consent Decree identified by a roman numeral.

m. “Subject Properties” shall mean the properties listed on Appendix A, attached hereto.

IV. COMPLIANCE WITH SECTION 1018

6. Defendant shall comply with all requirements of Section 1018 and its implementing regulations.

7. No later than ten (10) days after entry of this Consent Decree, Defendant shall provide to each tenant in the Subject Properties a lead hazard information pamphlet approved by EPA, as well as a "lead paint disclosure form" which shall include at a minimum the following:

- a. Any known and specific information concerning Lead-Based Paint Hazards and/or Lead-Based Paint, or state if there is no such knowledge;
- b. Copies of any and all available records or reports, or summaries thereof, pertaining to Lead-Based Paint Hazards and/or Lead-Based Paint in the Subject Properties, including but not limited to any notices from the City of Milwaukee; and
- c. A Lead Warning Statement containing the specific language set forth in regulations promulgated pursuant to Section 1018.

8. Within twenty (20) days after entry of this Consent Decree, Defendant shall provide written notice to HUD and EPA that it has complied with the requirements of Paragraph 7 of this Consent Decree.

V. PAYMENT OF PENALTY

9. Within sixty (60) days after entry of this Consent Decree, Defendant shall pay a civil penalty of \$15,000 to the United States, as an administrative penalty for past violations of Section 1018.

10. Payment of the civil penalty shall be rendered by electronic funds transfer to the United States Department of Justice, referencing USAO File Number 2003V00494 and the civil action case name and case number of the Eastern District of Wisconsin. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Wisconsin.

11. Notification that payment of the civil penalty, referencing the USAO File Number 2003V00494 and the civil action case name and case number of the Eastern District of Wisconsin, shall be provided in accordance with the notification provisions of Section XVI.

12. If Defendant fails to make any payment under Paragraph 9 and/or 11, it shall be subject to Stipulated Penalties pursuant to Paragraph 25 of this Consent Decree. In addition, Interest shall accrue on any unpaid amounts until the total amount due has been received.

13. This Agreement does not in any way release Defendant from any claims arising under Title 26 of the United States Code.

VI. WORK TO BE PERFORMED

14. This Section shall govern the risk assessments, hazard abatement work, window replacement, and on-going operations and maintenance to be performed under this Consent Decree at all Subject Properties.

Risk Assessments

15.a. No later than 1 year after the Lodging Date, Defendant shall have completed risk assessments on all Subject Properties consistent with Chapter 5 of the HUD Guidelines. For each Subject Property, Defendant shall provide a copy of the risk assessment report ("Risk Assessment Report") to HUD, EPA, and USAO no later than fifteen (15) days after receipt of each such Risk Assessment Report.

b. Such risk assessments shall be completed by a Certified Risk Assessor, as set forth in Paragraph 20. The name, address, company affiliation, and license number of the Certified Risk Assessor which the Defendant proposes to use for these risk assessments shall be submitted to

HUD, EPA, and USAO no later than 30 days prior to the date each risk assessment is scheduled to begin.

c. As part of the Risk Assessment Report for each Subject Property, Defendant shall presume the presence of Lead-Based Paint at all windows, and shall identify where windows are located in each Subject Property.

Hazard Abatement and Window Replacement Plan

16.a. No later than thirteen (13) months after the Lodging Date, Defendant shall provide copies to HUD, EPA, and USAO of a single plan consisting of both window replacement and hazard abatement ("Hazard Abatement Plan") for all Subject Properties. The Hazard Abatement Plan shall be prepared by a certified Lead Abatement Supervisor as set forth in Paragraph 20. The Hazard Abatement Plan shall include: (1) a list of property addresses for each Subject Property; (2) a list of properties with children and the address and unit number; (3) information about the hazards to be abated and windows to be replaced; (4) the method of hazard abatement chosen for each component in each Subject Property; and (5) the names and certification numbers of proposed certified abatement contractors to be used. The Hazard Abatement Plan shall be prepared to ensure that hazard abatement activities required by Section VI of this Consent Decree are conducted in accordance with Chapters 12 and/or 13 of the HUD Guidelines. The Hazard Abatement Plan shall include specifications as provided in the HUD Guidelines, Appendix 7.3. Lead-Based Paint Abatement Specification, or the equivalent.

b. The name, address, company affiliation, and license number of the certified Lead Abatement Supervisor that the Defendant proposes to use for preparation of its Hazard Abatement Plan and the lead contractor that the Defendant proposes to use for performing hazard

abatement and/or window replacement shall be submitted to HUD, EPA, and USAO no later than 30 days prior to the submission of the Hazard Abatement Plan.

c. After review of the Hazard Abatement Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing Defendant to resubmit the document after modification to address HUD's comments. If HUD disapproves of or requires revisions to the Hazard Abatement Plan, in whole or in part, Defendant shall amend and submit to HUD and EPA a revised Hazard Abatement Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. If the Hazard Abatement Plan, as revised by Defendant, is still not acceptable to HUD, HUD shall revise the Hazard Abatement Plan itself and Defendant shall implement this Plan as revised by HUD, subject to Defendant's right to dispute resolution. The Hazard Abatement Plan must be approved by HUD before any work is performed at the Subject Properties pursuant to this Consent Decree. The date of this approval shall hereafter be referred to as the "Hazard Abatement Plan Approval Date."

d. No later than thirty (30) days after the Hazard Abatement Plan Approval Date, Defendant shall submit a plan for ongoing operations and maintenance ("O&M Plan") for those properties that are not Lead-Based Paint Free. After review of the O&M Plan, HUD shall, in writing: (1) approve, in whole or in part, the submission; (2) approve the submission with modifications; or (3) disapprove, in whole or in part, the submission, directing the Defendant to resubmit the document after modification to address HUD's comments. If HUD disapproves of or requires revisions to the O&M Plan, in whole or in part, Defendant shall amend and resubmit

to HUD a revised O&M Plan which is responsive to the directions in HUD's comments, within fifteen (15) days of receiving such comments. If the O&M Plan, as revised by Defendant, is still not acceptable to HUD, HUD shall revise the O&M Plan itself and Defendant shall implement this Plan as revised by HUD, subject to Defendant's right to dispute resolution. The O&M Plan shall be prepared in accordance with Chapters 6 and 17 of the HUD Guidelines.

Hazard Abatement and Window Replacement Work

17. For each Subject Property, the following work shall be performed:

a. Complete window replacement or window component replacement of all window components including the sash components (upper and lower window sash), interior window stops and parting beads, window jambs, window casings, window sills, and window wells in accordance with Chapter 12 of the HUD Guidelines and lead-based paint abatement of remaining painted window components, in accordance with the Hazard Abatement Plan and Chapters 12 and/or 13 of the HUD Guidelines. All window replacement and/or window component replacement shall be completed within two (2) years of the Hazard Abatement Plan Approval Date, except replacement of all windows shall be completed within six (6) months of approval of the Hazard Abatement Plan Approval Date for those Subject Properties with children six (6) years of age or under.

b. All Lead-Based Paint hazards identified in the units, common areas and exteriors on each Subject Property shall be abated within four (4) years after the Hazard Abatement Plan Approval Date, except abatement of properties with children six (6) years of age or under shall be completed within one (1) year of the Abatement Plan Approval Date.

Abatement of the Subject Properties shall be in accordance with the Hazard Abatement Plan and with Chapters 12 and/or 13 of the HUD Guidelines.

c. No later than four (4) months after the Hazard Abatement Plan Approval Date, any bare soil identified on the grounds of each Subject Property shall be covered with a vegetative ground covering, mulch, or other appropriate covering in accordance with Chapter 11 of the HUD Guidelines.

d. Worksite preparation and occupant protection shall be in accordance with Chapter 8 of the HUD Guidelines.

e. Daily and final cleanups shall be in accordance with Chapter 14 of the HUD Guidelines.

f. Clearance Examinations shall be conducted by a certified risk assessor in each building upon completion of final cleanup in accordance with Chapters 7 and 15 of the HUD Guidelines, TSCA Section 403, 15 U.S.C. § 2683, and 40 C.F.R. § 745.227(e)(8) and (9). The name, address, company affiliation and license number of the Certified Risk Assessor that the Defendant proposes to use for these clearance examinations shall be submitted to HUD, EPA, and USAO no later than 30 days prior to the date the Clearance Examination is scheduled to begin. Each Clearance Examination shall include a full lead-based paint inspection, visual assessment, and dust samples. Within fifteen (15) days of the receipt of the clearance examination report ("Clearance Report"), Defendant shall submit the Clearance Report to HUD. The Clearance Report shall contain all results of the inspection, visual assessment, and of the dust samples analyzed at an EPA-accredited laboratory. If the results of the dust wipes indicate that the clearance standard is not achieved, Defendant shall repeat the cleaning procedures

identified above under Paragraph 17.e., repeat dust clearance sampling within five (5) days after receipt of the failed Clearance Report, and repeat this procedure until the clearance standard has been attained. If the results of the inspection and/or visual assessment indicate that some or all areas containing lead-based paint were not abated or that some or all of the abatement work failed or was not performed correctly, Defendant shall repeat the work required above under Paragraphs 18.a. through 18.c. as applicable within thirty (30) days after receipt of the failed Clearance Report in accordance with the Hazard Abatement Plan and Chapters 12 and/or 13 of the HUD Guidelines and repeat the clearance examination process until the clearance standard has been attained. All additional Clearance Reports shall be submitted as described above.

g. In each of the four years referenced in Paragraph 17(b), above, Defendant shall make substantial and reasonable progress on the Lead-Based Paint hazard abatement agreed to in this Consent Decree and shall detail the progress made in the Quarterly Reports required by Paragraph 23 of this Decree. The Parties agree that substantial and reasonable progress shall mean at least one-fourth (1/4) of the total inventory of Subject Properties shall be completed in each of the four (4) years.

18. All the requirements of this Section, except the timelines, shall apply where Defendant or any governmental entity is or becomes aware of a unit where a child with an elevated blood lead level resides or is a regular visitor. In addition to complying with any City, County, or State orders or requirements, Defendant shall perform a risk assessment and complete all required window replacement and abatement activity within five (5) months after Defendant is or becomes aware of a unit where a child with an elevated blood lead level resides or is a

regular visitor. Defendant shall also comply with any work required by any other government entity, such as the City, County, or State within the time frame imposed by that entity.

19. Ongoing operations and maintenance (“O&M”) in all Subject Properties that are not certified Lead-Based Paint Free shall be implemented at the completion of any window replacement or any other abatement activity, and shall be in accordance with the O&M Plan and Chapters 6 and 17 of the HUD Guidelines. During reevaluations, Defendant shall ensure that all abated areas are still intact and the abatement method has not failed. If any abatement has failed, Defendant shall repair the area in accordance with Chapters 12 and/or 13 of the HUD Guidelines and perform a Clearance Examination within thirty (30) days of discovery. If dust hazards are discovered as part of ongoing reevaluations, Defendant shall address them according to Chapter 11 of the HUD Guidelines.

VII. QUALIFICATIONS TO CONDUCT LEAD-BASED PAINT WORK

20.a. All risk assessments, window replacement, hazard abatement, and other Lead-Based Paint work shall be consistent with the HUD Guidelines.

b. Window replacement and/or hazard abatement work performed under this agreement shall be conducted by individuals authorized to perform the work in accordance with the laws of the jurisdiction where the property is located, including but not limited to the following requirements: window replacement and/or abatement work must be performed by state certified and licensed lead abatement workers under the direct supervision of a state certified and licensed Lead Abatement Supervisor. Such workers shall be employed by a company, which is licensed by the City of Milwaukee as a “home improvement contractor” and also be licensed by the State of Wisconsin as a “lead abatement company.”

c. Persons performing interim controls, visual assessments for O&M, and general maintenance shall be trained in either HUD's one day "Lead Safe Work Practices" class or the HUD/EPA "Remodeling, Repair, and Painting" class.

d. The United States may disapprove Defendant's proposed Risk Assessor under Paragraph 15.b., the proposed Lead Abatement Supervisor under Paragraph 16.b., any proposed abatement contractor under Paragraph 16.b. and 20.a., and any proposed Risk Assessor under Paragraph 17.f. of this Consent Decree. If the United States disapproves any Risk Assessor, Lead Abatement Supervisor or abatement contractor, within seven days of receipt of the United States' notice of disapproval, Defendant shall notify the United States, in writing, of the names and contact information for at least two other Risk Assessors, Lead Abatement Supervisors, or abatement contractors, as appropriate, who meet the qualifications of Section VII. Within seven days of receipt of such names and contact information, the United States may select one of such persons to be contractually retained by Defendant to perform the work required under Section VI of this Consent Decree. The United States's veto and selection of alternate person shall be in the sole discretion of the United States and shall not be subject to Dispute Resolution under Section XI of this Consent Decree. If Defendant fails to identify any person under this Paragraph within seven days after the United States disapproves a person, the United States may select a certified contractor to be retained by written contract to perform the work required under Section VI of this Consent Decree by Defendant within five days of notification from the United States of the name of such contractor.

21. Defendant shall ensure that Clearance Examinations are not conducted by the same individual and/or same or affiliated business entity conducting the risk assessments or by the

same individual and/or same or affiliated business entity conducting the hazard abatement work and/or window replacement that is being evaluated by the Clearance Examination.

22. Risk assessments must be performed by a risk assessor who is certified and licensed by the State of Wisconsin. Defendant shall ensure that risk assessments are not done by the same individual and/or same or affiliated business entity doing window replacement and/or hazard abatement work on the Subject Properties.

VIII. REPORTING REQUIREMENTS

23.a. On or before ninety days following entry of this Consent Decree, and every ninety days thereafter until completion of all hazard abatement and window replacement, Defendant shall submit a written Quarterly Report to HUD and EPA. The Quarterly Report shall include, at a minimum: (1) a list of the property addresses where hazards have been abated and/or windows have been replaced; (2) the status of window replacement and hazard abatement activities, including the type of abatement method chosen and components abated, and a list of the property addresses where hazard abatement has been completed during that reporting period; (3) the status of ongoing O&M activities in accordance with Paragraph 19; (4) any and all information concerning the cost of the inspections, window replacement, and hazard abatement performed; (5) any Clearance Reports that have not been previously provided to HUD under Paragraph 17.f.; (6) any State or City notices relating to Lead-Based Paint violations at the Subject Properties; and (7) a list of properties to be abated and/or windows to be replaced in the next reporting period.

b. Defendant shall ensure contractor compliance with any State and/or City requirements for reporting risk assessments, window replacement, and hazard abatement work in accordance with the laws of the jurisdiction where the property is located.

X. STIPULATED PENALTIES

24. If Defendant fails to make timely payment of the penalty provided for in Paragraph 9 or the payment provided for in Paragraph 11 in Section V, Defendant shall be required to pay as Stipulated Penalties \$200 per day. Stipulated Penalties shall accrue until such time as the original penalty or payment and all accrued Stipulated Penalties and Interest are paid.

25. If Defendant fails to complete risk assessments as described in Paragraph 15, to complete window replacement and/or hazard abatement as described in Paragraphs 17 and 18, or to conduct O&M as described in Paragraph 19, Defendant shall pay Stipulated Penalties of \$200 per day per violation per each unit, until the risk assessment, window replacement, hazard abatement, and/or O&M is completed. If any hazard abatement method fails because of Defendant's failure to follow the HUD Guidelines and/or conduct O&M as described in Paragraph 19, those properties shall not be considered abated in accordance with this Consent Decree and Stipulated Penalties shall accrue.

26. If Defendant fails to submit any information or reports to HUD, as described in Paragraphs 15, 16, 17, and 23 in accordance with the requirements and/or deadlines set forth in this Consent Decree, Defendant shall pay Stipulated Penalties of \$200 per day for each day each such submission is deemed inadequate and/or late.

27. Payment of Stipulated Penalties shall be made to the United States in the manner set forth in Paragraph 10 of this Consent Decree.

28. Stipulated Penalties shall accrue regardless of whether the United States has notified Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to

accrue through the date of payment, or until the required activity is performed. However, the United States may, in its unreviewable discretion, waive or reduce the amount of any Stipulated Penalty. Nothing herein shall prevent the United States from seeking other relief that may be available for non-compliance, nor prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

X. FORCE MAJEURE

29. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

30. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

31. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time

necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate written modification shall be made to this Consent Decree and signed by the parties.

32. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section XI of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Defendant gave the notice required by Paragraph 30, that the force majeure event caused any delay Defendant claims was attributable to that event, and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

XI. DISPUTE RESOLUTION

33. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce the obligations of Defendant under this Consent Decree that Defendant has not timely disputed in accordance with this Section.

34. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is

modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

35. If the Parties are not in agreement at the end of this informal negotiations period, the position of the United States shall be controlling unless Defendant files a petition with the Court for resolution of the dispute within twenty-one (21) days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have twenty-one (21) days to file a response with an alternate proposal for resolution. In any such dispute, Defendant shall have the burden of proving that the United States' proposal is arbitrary and capricious.

36. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect any obligation of Defendant under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 28. Notwithstanding the stay of payment, Stipulated Penalties shall accrue from the first day of non-compliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Paragraph 28.

XII. RIGHT OF ENTRY

37. HUD, EPA and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon all Subject Properties owned or controlled by Defendant, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- a. monitoring the progress of activities required by this Consent Decree;

- b. verifying any data or information required to be submitted pursuant to this Consent Decree;
- c. obtaining samples and, upon request, splits of any samples taken by Defendant or its consultants (upon request, Defendant will be provided with splits of all samples taken by the United States); and
- d. otherwise assessing Defendant's compliance with this Consent Decree.

38. This Section in no way limits or affects any right of entry and inspection held by the United States, HUD, EPA, any State in which the property is located, or any City in which the property is located pursuant to applicable federal, state or local laws, regulations, or permits.

XIII. COVENANT NOT TO SUE

39. In consideration of the payments required by this Consent Decree and the work to be performed, and except as otherwise provided in this Consent Decree, the United States covenants not to sue or take administrative or other action against Defendant arising out of violations of Section 1018 at the Subject Properties that occurred on or before the date of lodging of this Consent Decree. This covenant not to sue with respect to Defendant is conditioned upon the complete and satisfactory performance by Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Defendant and does not extend to any other person or business entity.

XIV. PLAINTIFF'S RESERVATIONS OF RIGHTS

40. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 39. The United States reserves, and this Consent Decree

is without prejudice to, all rights against Defendant with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Defendant to meet a requirement of this Consent Decree;
- b. claims based upon violations of Section 1018 that occur after the date of lodging of this Consent Decree;
- c. criminal liability; and
- d. all claims not barred by Paragraph 39 of this Consent Decree.

XV. MISCELLANEOUS

41. This Consent Decree in no way affects Defendant's responsibilities to comply with all federal, state, or local laws and regulations.

42. Except as otherwise provided in this Consent Decree, each Party shall bear its own costs and attorneys' fees in this action.

XVI. NOTICES AND SUBMISSIONS

43. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be in writing and directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States and Defendant.

44. All notices and reports shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of United States v. Will J. Sherard, *et al.* and the case number.

U.S. Attorney's Office:

Chief, Civil Division
United States Attorney's Office
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

U.S. Department of Justice:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station

Washington, DC 20044

U.S. Department of Housing and Urban Development:

Director, Compliance Assistance and Enforcement Division
Office of Healthy Homes and Lead Hazard
Control
U.S. Department of Housing and Urban
Development
451 7th Street, SW
Room P-3206
Washington, DC 20410

and

John B. Shumway
Deputy Assistant General Counsel
U.S. Department of Housing and Urban
Development
451 7th Street, SW
Room 9253
Washington, DC 20410

U.S. Environmental Protection Agency:

Chief, Pesticides and Toxics Enforcement Section
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Defendant:

WILL J. SHERARD
2233 W. Capitol Dr.
Milwaukee, WI 53206

45. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

46. Any notice, report, certification, data presentation, or other document submitted by Defendant pursuant to this Consent Decree which discusses, describes, demonstrates, supports any findings, or makes any representation concerning Defendant's compliance or non-compliance with any requirement of this Consent Decree shall be certified by Defendant or a duly authorized representative of Defendant. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the United States consistent with this Paragraph.

47. The certification required by Paragraph 46, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. With regard to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such persons, the information submitted is, the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting

false information, including the possibility of fines and imprisonment for knowing violations.

Signature:

Name:

Title:

XVII. RETENTION OF JURISDICTION

48. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION

49. This Consent Decree and Appendix constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. It may not be enlarged, modified, or altered unless such modifications are made in writing and approved by the Parties and the Court. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

50. Defendant agrees and acknowledges that final approval of this Consent Decree by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, opportunity for public comment for at least thirty (30) days, and consideration of any comments prior

to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Defendant consents to entry of this Consent Decree without further notice to the Court.

51. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XX. EFFECTIVE DATE

52. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXI. RECORD RETENTION AND PRESERVATION

53. Defendant shall preserve, during the pendency of this Consent Decree and for a minimum of at least twelve (12) months after its termination, all documents and records in its custody, control or possession and in the custody, control or possession of its employees, agents, assigns, contractors, subcontractors or consultants, which in any manner relate to this Consent Decree or to the performance of work under this Consent Decree. At the end of this twelve (12) month period and at least thirty (30) calendar days before any document or record is destroyed, Defendant shall notify and make available to the United States such documents and records, or shall provide the originals or accurate, true and complete copies of such documents and records to the United States. Defendant shall not destroy any document or record to which the United States has requested access for inspection or copying until the United States has obtained such access or copies or withdrawn its request for such access or copies.

XXII. SIGNATORIES/SERVICE

54. Each undersigned representative of the United States and Defendant certifies that he or she has reviewed this Consent Decree, and had the opportunity to have this Consent Decree reviewed by counsel, and is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

55. Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree based on public comments received pursuant to Paragraph 50 above.

56. Defendant agrees that the person identified on its behalf under Section XVI is authorized to accept service of process by mail on behalf of Defendant with respect to all matters arising under or relating to this Consent Decree. Defendant hereby agrees to accept service by certified mail in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

57. Upon approval and entry of this Consent Decree by the Court, the Consent Decree shall constitute a final judgment pursuant to Rules 54 and 58 of the Federal Rule of Civil Procedure.

XXIII. TERMINATION

58. This Consent Decree shall terminate after all of the following have occurred:

a. Defendant has completed all work required by this Consent Decree;

b. Defendant has paid all penalties and interest due under this Consent Decree and no penalties are outstanding or owed to the United States;

c. Defendant has certified compliance with the terms and conditions of this Consent Decree to the United States; and

d. The United States has not disputed Defendant's certification. If the United States disputes Defendant's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court. If the United States does not contest the certification, the United States shall petition or the Parties shall jointly petition the Court to terminate the Consent Decree.

So entered in accordance with the foregoing this _____ day of _____, 2005.

UNITED STATES DISTRICT COURT JUDGE

United States v. Will J. Sherard, et al.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the above matter, relating to the sites enumerated in this Consent Decree:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Date

4/16/05

STEVEN M. BISKUPIC
United States Attorney, Eastern District of Wisconsin

STACY C. GERBER WARD
Assistant U.S. Attorney
Eastern District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 297-1700

Date

5/2/05

United States v. Will J. Sherard, et al.

FOR UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

KATHLEEN D. KOCH
Deputy General Counsel

Date 3/31/05

JOHN P. KENNEDY
Associate General Counsel

Date 3/30/05


JOHN B. SHUMWAY
Deputy Assistant General Counsel
Office of General Counsel
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Date 3/30/05

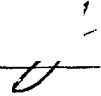
United States v. Will J. Sherard, et al.

United States v. Will J. Sherard, et al.

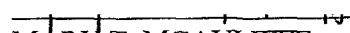
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

 _____
BHARAT MATHUR
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date 4/4/05

 _____
BERTRAM C. FREY
Acting Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date March 23, 2005

 _____
MARY T. MCAULIFFE
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date March 23, 2005

United States v. Will J. Sherard, et al.

FOR WILL J. SHERARD:

1

WILL J. SHERARD
2233 W. Capitol Dr.
Milwaukee, WI 53206

Date

3/21/05

FOR W. J. SHERARD REALTY COMPANY:

1

W. J. SHERARD
2233 W. Capitol Dr.
Milwaukee, WI 53206

Date

3/21/05

Appendix A

**W. J. SHERARD REALTY CO.
PROPERTY LIST**

2643-45 North 4 th	3017-17A North 28 th Street
3454-56 North 9 th	3366 North 28 th Street
4106 North 24 th Place	4065-65A North 24 th Place
2839-39A North 12 th	4343 North 25 th Street
3434 North 12 th Street	2231 West Capitol
2935-35A North 16 th	3802 West Capitol
3445 North 16 th	4063-65 North Elmhurst
3946-46A North 15 th	2757 North 16 th Street
2625-25A North 17 th	3369-69A North Palmer Street
3522-22A North 19 th	3433-33A North Richards
3003 North 21 st	1914-16 West Vienna
3249-49A North 35 th Street	2468-70 West Burleigh
3278-78A North 24 th Street	2400-00A West Finn Place
3391-91A North 20 th Street	3314 West McKinley
2720-22 North 21 st	4576 North 36 th
3833-33A North 23rd	6172 North 39 th Street
3291-91A North 24 th	3119 West Walnut Street
2742-44 North 26 th	1944 North 37 th Street
2841-43 North 27 th	1967 North 36 th Street
3328 North 26 th Street	